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Response to Final OA dated December 15, 2005

IN THE DRAWINGS

No objection to the drawings was indicated by the Examiner. As such, Applicants assume the drawings to be acceptable.

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REMARKS

Claims 1-17 are pending in the instant application. Applicants respectfully request reconsideration of the application in view of the remarks set forth below.

In the Final Office Action, rejection of claims 1, 2, 5-9 10, 11, and 14-17 under 35 U.S.C. §103(a) as allegedly being unpatentable by *Ament*, U.S. Patent Publication No. 2004/0105436 (hereinafter *Ament*) and in further view of *Bender*, et al. U.S. Patent No. 6,366,779 (hereinafter *Bender*) was maintained. Applicants respectfully traverse the Examiner's rejections.

Independent claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Ament*, in view of *Bender*. Applicants respectfully traverse the Office's §103 rejection of independent claim 1. Independent claim 1 is directed to a method of communication that, among other things, includes in response to a request for a service, transmitting at least one message comprising existing delay information corresponding with an estimated delay length associated with accessing the service through an open loop network.

As the Examiner well knows, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. Moreover, all the claim limitations must be taught or suggested by the prior art. If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.

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With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. In face, the absence of a suggestion to combine is dispositive in an obviousness determination. The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. See M.P.E.P. §2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure.

Applicants submit that the pending claims are not obvious in view of *Ament* and *Bender*, either considered alone or in combination. As discussed below, the Examiner concedes that *Ament* fails to teach or suggest the limitation in claim 1 as to transmitting at least one message comprising existing delay information and estimating the delay length associated with the service. The Examiner relies on *Bender* to teach this limitation. However, *Bender* also fails to teach or suggest that transmission of at least one message comprises existing delay information. Neither *Ament* or *Bender* estimate delay length associated with accessing the service. Furthermore, neither *Ament* and *Bender* provide any suggestion to modify or combine the prior art as suggested by the Examiner so as to arrive at Applicants' claimed invention.

In rejecting claim 1, the Examiner asserts that *Ament* teaches in [0002] "that [t]he resource manager reserves a service from a providing bus user if the service is free and sends a response to a requesting bus user so that the requesting bus user can use the service from the providing bus user via the data bus." and further states in [0021] that "[a] resource conflict arises

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when a requested resource has already been engaged. The Examiner asserts that a requesting bus user can indicate whether it needs to be put into a waiting list if the service is engaged.” The Examiner cites description of Figure 2 in *Ament* at paragraph [0043] to assert that an application sends a service request 9 to the resource manager. And in response the resource manager sends a response to the request 14 which includes the waiting time for the service (see [0043]). The Examiner concludes that the resource manager does not know exactly how long the service will be engaged for and thus the waiting time, i.e. delay, is an estimate. For deriving this conclusion, the Examiner cites paragraph [0009]. The Examiner further asserts that the time to accomplish a communication service can vary based on the communication conditions, which can alter the throughput. In this way, the Examiner alleges that the combination of *Ament* and *Bender* teaches the claimed invention because *Ament* can be modified by *Bender* in order to achieve claim 1 features. Applicants respectfully disagree with this reasoning.

In the Office Action, the Examiner seems to imply that *Ament* discloses transmitting at least one message comprising existing delay and *Ament* teaches or suggests an estimated delay length associated with accessing the service. Applicants respectfully disagree with this reasoning since this assertion is not supported at all by the language in *Ament*. There are several problems with the Examiner’s position. As an initial matter, it is well-established that the prior art references when considered alone or in combination, must teach each and every claimed feature exactly. One problem with the Examiner’s rejection is that it is not supported by the very reference upon which the rejection relies. In *Ament* the resource manager controls the service engagement on the basis of a priority information item that is transmitted to the resource manager in a message from the requesting bus user. See *Ament*, paragraph [0009], page 1. *Ament* teaches use of the priority of the current request to determine whether to engage the

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service for the requesting bus user by the resource manager. That is, if the priority of the current request is higher than the priority of a prior user, the service's existing engagement is cancelled and the service can be engaged for the requesting bus user by the resource manager. If the priority of the current request is lower than or same as the priority of the prior bus user, the bus user's request is rejected by the resource manager or is entered into the list of already existing requests in order. See *Ament*, paragraph [0021], page 2. Contrary to *Ament*, independent claim 1 recites transmitting at least one message comprising existing delay information corresponding with an estimated delay length.

Ament is directed to a data bus system that controls service engagements for bus users. A resource manager controls the service engagement on the basis of a priority information item. The resource manager sends a response to a requesting bus user, allowing the requesting bus user to use the service from the providing bus user via the data bus.

In other words, in a data bus system described by *Ament*, waiting times for particular services on the data bus determines whether a resource request 9 by an application 8 for a requested service would be successful. See *Ament*, paragraph [0043], page 4. Accordingly, actual waiting times associated with service requests are used to determine whether to provide a service to a particular user of the data bus. The resource manager transmits an identifier for the service, and information regarding whether the request was successful, how long the waiting times are and/or the form in which the service can be used to the requesting application.

Ament uses the waiting time information for particular services along with a priority item for a current service request to provide a service to a bus user. In other words, the information about the priority of the current request and the waiting times for the already existing requests are used to determine whether to provide a service to a bus user in a bus system. Thus, *Ament*

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does not teach or suggest transmitting existing delay information, as noted above, moreover, *Ament* does not estimate delay length associated with accessing the service. It, clearly cannot supply the missing claimed features in claim 1.

The Examiner does not cite to any other reference to show the missing claimed features. Instead, the Examiner advances a conclusory statement that *Ament* teaches in response to a request for a service, transmitting at least one message comprising existing delay information corresponding with an estimated delay length associated with accessing the service through an open loop network. Such a conclusory statement is clearly deficient. Because the Office provides no citations in *Ament* and/or cites other *reference(s)* to support this “obviousness” assertion, Applicants infer that the Examiner makes this assertion based on **personal knowledge**. However, no **supporting affidavit** has been made of record. The applicant respectfully requests that prior art be provided to substantiate this “obviousness” assertion or that an **affidavit** be filed in accordance with 37 C.F.R. § 1.104(d)(2), which states (emphasis added):

(2) When a rejection in an application is based on facts **within the personal knowledge** of an employee of the Office, the data shall be as specific as possible, and the reference **must be supported, when called for by the applicant, by the affidavit of such employee**, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Consequently, Applicants respectfully request the Office to either (1) **cite a reference** in support of this position, or (2) **provide a Rule 104(d)(2) affidavit** from the Examiner supporting any facts **within the personal knowledge of the Examiner**, as also set forth in **M.P.E.P. § 2144.03**.

With regard to *Bender*, to control the transmission power of the requesting mobile stations, it discloses rapid assignment of traffic channels to mobile stations in a wide area high-speed packet data cellular communication system. By reducing the time delays associated with

the traffic channel request and assignment process, *Bender* assigns the mobile station a traffic channel and allows the base stations to use the traffic channel, and not the control channel, for transmitting the traffic channel assignment message to the requesting mobile station. Since the traffic channel operates at a far higher rate than does the control channel, *Bender* provides a traffic channel assignment message at a much higher rate to the mobile station than was previously available. See *Bender*, col. 13, lines 26-35.

Contrary to *Bender*, independent claim 1 recites existing delay information corresponding with an estimated delay length associated with the accessing the service through an open loop network. Accordingly, *Bender* does not teach or suggest the claimed feature of claim 1. For at least this reason, the rejection of independent claim 1 and dependent claims 2-9, depending therefrom should be withdrawn and claims be allowed.

Neither *Ament* nor *Bender* teaches or suggests transmitting a message comprising existing delay information corresponding with an estimated delay length. Moreover, *Ament* and *Bender* are directed to different fields of use. *Ament* is intended to control a service engagement in a data bus system and *Bender* is directed to rapid assignment of a traffic channel in digital cellular communication systems.

In fact, the disclosures of the *Ament* and *Bender* references are considerably different. These references were not intended to be modified or combined, in a manner, as suggested by the Examiner. Moreover, if the proposed combination is obtained, it would still be unable to perform the claimed features of the present invention. Furthermore, if there is no motivation to combine found in the references itself, the references can not render claim 1 obvious in a *prima facie* manner. Therefore, for at least this reason, Applicants respectfully request that the

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rejection of independent claim 1 and claims depending therefrom be withdrawn and claims be allowed.

For the aforementioned reasons independent claim 10 and claims depending therefrom 12-17 are in condition for allowance. Therefore, independent claim 10 and claims depending therefrom should be allowable.

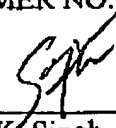
In the Office Action, claims 3, 4, 12 and 13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable by *Ament* and *Bender* in view of *Buford*, et al. U.S. Patent No. 5,945,948 (hereinafter *Buford*). However, *Buford* fails to address the above-indicated shortcomings of *Ament* and *Bender*.

In view of the foregoing, Applicants respectfully submit that all pending claims are in condition for allowance. The Examiner is invited to contact the undersigned at (713) 934-4089 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

WILLIAMS, MORGAN & AMERSON
CUSTOMER NO. 46290

Date: 02/15/06



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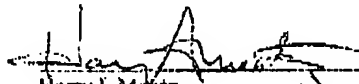
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